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RE: City of Brockton CWA matter.

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Memorandum

United States Attorney
District of Massachusetts

DRAFT



Subject Proposed Consent Decree for settlement of Clean Water Act claims against the City of Brockton, Massachusetts	Date June 2006
To Sue Ellen Wooldridge	From Barbara Healy Smith Assistant U.S. Attorney District of Massachusetts Brian Donohue, Environmental Enforcement Section

SUMMARY AND RECOMMENDATION

Attached for your review, approval, and signature are a proposed Complaint and Consent Decree that would settle the United States' claims against the City of Brockton, Massachusetts (the City) for violations of the Clean Water Act, 33 U.S.C. § 1319(b) and (d). ("CWA"). Under the proposed decree, the City would pay a civil penalty of \$120,000 (divided evenly between the Commonwealth of Massachusetts and the federal government), and comply with a variety of injunctive measures to achieve full compliance with the CWA. The Commonwealth will be filing a separate complaint and simultaneously moving to consolidate the federal and state cases. We recommend that you approve and sign the decree.

DISCUSSION

I. Background

A. Defendant

Brockton, a community of approximately 94,304 residents located in southeastern Massachusetts, owns and operates an 18 million gallon per day advanced wastewater treatment plant that discharges into the Salisbury Plain River. The City also maintains a separate sanitary sewer collection system. According to census data, the City's median household income is \$39,507 (22% lower than the state average), and it has a significant minority population.

B. Nature of Violations

Discharges from Brockton's publicly-owned treatment works (POTW) violate the City's

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CWA National Pollutant Discharge Elimination System (NPDES) permit. Among other things, the City has reported violations of its BOD, TSS, phosphorous, total residual chlorine, fecal coliform, copper and ammonia NPDES permit limits.

C. Environmental Significance of Violations

Because the discharge from the City's POTW represents the major portion of the stream during non-high-flow periods, these violations have the potential to cause significant ecosystem damage and public health concerns.

II. Causes of Action

Discharges from the city's POTW violate the City's NPDES permit and, therefore, Section 301(a) of the CWA. EPA referred the matter to the Department of Justice to seek penalties and injunctive relief pursuant to § 309(b) and (d). 33 U.S.C. §§ 1319(b) and (d).

III. The Consent Decree

In satisfaction of the United States' claims as alleged in the Complaint, the decree requires the City to achieve and maintain compliance with the CWA and to pay a civil penalty as follows:

A. Civil penalty

The Consent decrees requires the City to pay a cash penalty of \$120,000 (\$60,000 each to the federal government and the Commonwealth), and to expend an additional \$180,000 in the form of three high-quality Supplemental Environmental Projects (SEPs) which will produce environmental and/or public health benefits beyond those required by law. The three SEPs are described below.

1. The City will undertake a post-upgrade water quality assessment of the Salisbury Plain River to determine if more treatment (especially with respect to phosphorus) may be necessary at the City's publicly owned treatment works ("POTW") in the future. The cost of this project will be \$80,000. Aside from providing important water quality information, this project will lead to a settlement of a citizen's appeal of the City's recently reissued NPDES permit. This project falls under the category of "environmental quality assessments." The project is environmentally beneficial in that it is designed to ensure that improvements to the water quality of the river will continue and will further the goals of restoring and maintaining the chemical, physical and biological integrity of the river.

2. The City will undertake a program to investigate whether there is lead in the

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drinking water of the City's schools and certain day care facilities in accordance with protocols that have been reviewed by both the EPA and MADEP drinking water offices. This will be a "pilot" program that it is hoped will be one of the first of several such studies that MADEP (and EPA) would like to see done by other cities and towns. Any problems that are uncovered ~~are required to be~~ addressed under state law. The cost of this project will be \$25,000. Given that this is an EJ community, such a project will benefit vulnerable low-income and minority population. The United States Environmental Protection Agency (US EPA) recommends that school drinking water not exceed 20 part per billion (ppb) of lead. *Massachusetts Department of Environmental Protection (MA DEP) sets a limit of 15 ppb.* Yet, at present there is no program providing for testing under uniform, professional protocols. The case team from the EPA Region is enthusiastic about this SEP, in part because of its commitment to EJ projects (the Region's 2003 EJ Action Plan states that "Regional personnel will encourage the regulated community to address EJ in the settlement of enforcement cases, including the use of Supplement Environmental Projects.").

3. The City will expend \$75,000 on a study to investigate alternative wastewater treatment options for communities in Southeastern Massachusetts. Many of the surrounding communities do not have their own treatment plants. Two communities, Whitman and Abington, already send wastewater to Brockton's POTW, and have indicated they would like to increase their allowable flow, while other neighboring towns have expressed a desire to tie into Brockton's treatment plant. This is not feasible, however, due to the limited capacity of the plant even after the upgrade, but more importantly because of the limitations on pollutant loadings that can be discharged to a low flow river such as the Salisbury Plain River. Therefore, alternative regional treatment options must be investigated, such as decentralized treatment units. For a variety of reasons, we encouraged the idea that through this SEP Brockton would be taking a leading role in studying alternatives (it will shift focus away from looking to Brockton as the regional "treatment center," and instead send the message region-wide that Brockton is committed to developing alternative solutions).

B. Injunctive Relief

Under the decree, the City must undertake a number of construction projects to upgrade and expand its POTW and rehabilitate its collection system. These projects are estimated to cost approximately \$61 million. Instead of waiting for settlement of the civil judicial case, the EPA Region I office issued an administrative order to Brockton in 2003 requiring the City to take immediate steps to remedy operations and maintenance problems in the existing treatment plant and to also begin the initial steps to upgrade the plant. The City completed the steps in the administrative order, and has begun the actual work on the upgrade. Under the Consent Decree, the upgrade will be completed by February, 2009. While some of the compliance due dates in the enclosed Consent Decree have passed pending approval of the settlement by the

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Commonwealth, the City has been complying with the consent decree's terms and has met all the due dates thus far.

The Consent Decree also requires Brockton to rehabilitate the collection system to reduce extraneous flows. Once Phase II of the project is completed, the City is required to develop specific interim effluent limits which will remain in effect until completion of the projects; until that time, interim operational practices are required. Should the City fail to comply with the terms of the Consent Decree, it will be subject to stipulated penalties which will be evenly split between the federal and state governments.

IV. Significant Issues and/or External Interest

This case does not present any unusual or precedential issues and there has been no external interest expressed in this case.

V. Recommendation

We believe this to be a very favorable resolution of this matter. The injunctive relief obtained will provide significant public health and ecosystem protections. The total expenditures for penalties (including SPEs) exceed what we had calculated under the Municipal penalty policy to be a bottom line penalty amount. Finally, the three SEPs will provide very tangible benefits to the residents of Brockton and (except for the lead study) surrounding communities.

We recommend that you sign the consent decree, as signed by the defendant.

CONCLUSION

We believe the proposed consent decree reflects a favorable resolution of the United States' claims against the City. Accordingly, we recommend that you approve and sign the decree.